



30 JAN 2006

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|                                   |   |                      |
|-----------------------------------|---|----------------------|
| In re Application of              | : |                      |
| HENDRIX et al.                    | : |                      |
| Application No.: 10/520,552       | : | DECISION ON PETITION |
| PCT No.: PCT/EP03/06661           | : |                      |
| Int. Filing Date: 25 June 2003    | : |                      |
| Priority Date: 08 July 2002       | : |                      |
| Attorney Docket No.: Le A 36 079  | : |                      |
| For: SUBSTITUTED IMIDAZOTRIAZINES | : |                      |

This decision is issued in response to applicants' "Completion of Filing Requirements Nonprovisional Application" which is being treated as a Request under 37 CFR 1.42 filed 19 October 2005.

### BACKGROUND

On 25 June 2003, applicants filed international application PCT/EP03/06661, which claimed a priority date of 08 July 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 15 January 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 08 January 2005.

On 05 January 2005, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application; and a preliminary amendment.

On 17 August 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 19 October 2005, applicants filed the present request under 37 CFR 1.42.

### DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

The declaration submitted on 19 October 2005 was executed by Maria Niewohner as "heiress" to the deceased inventor, Ulrich Niewohner. Counsel avers that "Maria Niewohner is the sole heir of Ulrich Niewohner." The declaration is acceptable under 37 CFR 1.42 and complies with 37 CFR 1.497(a)-(b). Accordingly, the requirements for entry into national stage under 35 U.S.C. 371(c) were completed as of 19 October 2005.

It is noted that the submission of the declaration executed by all of the heirs of the deceased inventor is hereby construed as an indication that no legal representative of the deceased's estate has been appointed or is statutorily required to be appointed. If this interpretation is incorrect, applicant is required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

### CONCLUSION

The papers filed under 37 CFR 1.42 are ACCEPTED.

The application has an international filing date of 25 June 2003, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **19 October 2005**.

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.



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